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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,707	07/01/2003	Victor J.J. Cautereels	131025-D200	4453
20094	7590	09/25/2006	EXAMINER	
DART INDUSTRIES INC P O BOX 779001 ORLANDO, FL 328779001			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/611,707

Applicant(s)

CAUTEREELS ET AL.

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Heil et al. US 6,862,980.

Heil '980 teaches a container with a base tray (204) supported by beads (402) to define a tray, a dome-shaped cover (104) having a vent panel (108) and means (710, 802) for releasably locking the vent panel to the cover. Examiner reads the opening to be the entire circular depression (unlabeled) in the cover, with which the cover (106) is coextensive in that they both have a common circular periphery.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heil et al. US 6,862,980 in view of Maenke US 6,883,675.

Heil '980 does not teach a vent panel with multiple holes over substantially the entire area, and furthermore does not teach a foil of predetermined vapor permeability.

Maenke '675 teaches a vent panel (70) with a plurality of holes and a water proof/vapor permeable foil membrane (74), for controlling atmospheric conditions within the container.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vent panel assembly of Heil '980, providing the configuration of a waterproof/vapor permeable membrane below a panel of perforations, as taught to be known by Maenke '675, motivated by the benefit of controlling atmospheric conditions within the container using a known mechanical expedient vent means.

6. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heil et al. US 6,862,980 in view of Maenke US 6,883,675 as applied above to claim 4, and further in view of Gouttefangeas US 4,932,549.

Heil '980, as modified above, fails to teach a depending locking ring, but discloses in column 6, lines 62-68, various other means to secure the filter to the filter opening may be employed.

Gouttefangeas '549 teaches securing a panel to a cover using an annular locking ring (23).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the connection between the cover and venting lid of Heil '980, providing an annular locking ring, as taught by Gouttefangeas '549, because Heil '980 discloses any known means may be employed.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heil et al. US 6,862,980 in view of Maenke US 6,883,675 and in view of Gouttefangeas US 4,932,549, as applied above to claim 6, and further in view of Hagen et al. US 6,237,765.

Heil '980, as modified, fails to teach a finger recess.

Hagen '765 teaches it is known to provide a finger recess (44) to enable a user to grip and pry open a container panel opening. Although disposed for opening a hinged closure, one having ordinary skill will recognize the recess could be applied to pry open resilient secured closures such as those of Heil '980.

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8. Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heil et al. US 6,862,980 in view of Hagen et al. US 6,237,765:

Heil '980, as modified, fails to teach a finger recess.

Hagen '765 teaches it is known to provide a finger recess (44) to enable a user to grip and pry open a container panel opening. Although disposed for opening a hinged closure, one having ordinary skill will recognize the recess could be applied to pry open resilient secured closures such as those of Heil '980.

9. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heil et al. US 6,862,980 in view of Gouttefangeas US 4,932,549.

Heil '980 fails to teach a depending locking ring, but discloses in column 6, lines 62-68, various other means to secure the filter to the filter opening may be employed.

Gouttefangeas '549 teaches securing a panel to a cover using an annular locking ring (23).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the connection between the cover and venting lid of Heil '980, providing an annular locking ring, as taught by Gouttefangeas '549, because Heil '980 discloses any known means may be employed.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heil et al. US 6,862,980 in view of Gouttefangeas US 4,932,549 as applied above to claim 11 and further in view of Hagen et al. US 6,237,765.

Heil '980, as modified, fails to teach a finger recess.

Hagen '765 teaches it is known to provide a finger recess (44) to enable a user to grip and pry open a container panel opening. Although disposed for opening a hinged closure, one having ordinary skill will recognize the recess could be applied to pry open resilient secured closures such as those of Heil '980.

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11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heil et al. US 6,862,980 in view of Gouttefangeas US 4,932,549, as applied above to claim 11, and further in view of Daenen et al. US Des. 270,322.

Heil '980, as modified, does not teach a planar tray with an outwardly projecting ledge.

Daenen '322 teaches it is known to form a container of a tray with a planar surface and outwardly projecting ledge.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Heil '980, forming the base and cover as that taught by Daenen '322, because both containers are taught to be used for food products.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heil et al. US 6,862,980 in view of Daenen et al. US Des. 270,322.

Heil '980 does not teach a planar tray with an outwardly projecting ledge.

Daenen '322 teaches it is known to form a container of a tray with a planar surface and outwardly projecting ledge.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Heil '980, forming the base and cover as that taught by Daenen '322, because both containers are taught to be used for food products.

13. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heil et al. US 6,862,980 in view of Daenen et al. US Des. 270,322 as applied above to claim 14, and further in view of Maenke US 6,883,675.

Heil '980 does not teach a vent panel with multiple holes over substantially the entire area, and furthermore does not teach a foil of predetermined vapor permeability.

Maenke '675 teaches a vent panel (70) with a plurality of holes and a water proof/vapor permeable foil membrane (74), for controlling atmospheric conditions within the container.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vent panel assembly of Heil '980, providing the configuration of a waterproof/vapor permeable membrane below a panel of perforations, as taught to be known by Maenke '675, motivated by the benefit of controlling atmospheric conditions within the container using a known mechanical expedient vent means.

Response to Arguments

14. Applicant's arguments filed 19 June 2006 have been fully considered but they are not persuasive.

Applicant argues Maenke US 6,883,675 is non-analogous.

In response to applicant's argument that Maenke US 6,883,675 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Heil '794 and Maenke '675 are both drawn to solving the same problem, that being barrier layers designed to maintain the atmospheric conditions inside a container, and therefore one of ordinary skill would find it obvious to combine the two references.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER